Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; | ) | CC Docket No. 96-149 |
| | ) | |
| and | ) | |
| | ) | |
| Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area | ) | |



# REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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## SUMMARY

In its initial Comments, MCI demonstrated that non-Bell ILECs, like the BOCs, are imposing excessive access charges on IXCs, thereby subjecting the IXCs to a price squeeze in their competition with the ILECs' in-region interLATA services. Any serious attempt to inhibit this anticompetitive strategy for ILECs must begin with enforcement of the imputation rules, by requiring the ILECs to demonstrate in their tariff filings that each of their interLATA service rates covers all of its imputed access charges and other costs. Such imputation enforcement is necessary for both the BOCs and ILECs.

In response, the ILECs argue that they could not possibly hope to attain the degree of interLATA market power that would enable them to raise prices by restraining output or to drive the large IXCs from the market through predatory pricing. Raising rivals' costs, however, injures competition irrespective of the cost raiser's ability to drive such rivals from the market. Moreover, unlike the case of predatory pricing, an ILEC does not have to absorb a real loss in order to subject its interLATA rivals to a price squeeze, since the ILECs' own cost of access is only the economic cost of providing it, which is much less than the full tariffed rates paid by the IXCs.

The BOCs and ILECs also argue that price cap regulation prevents the raising of rivals' costs through increased access charges. They add that increasing their access rates would be economically irrational, since such increases would drive up

interLATA rates, thereby reducing demand for access services. Because access charges are already excessive under price cap regulation, however, the BOCs' and ILECs' price squeeze strategy is already in place. They do not have to risk any dampening of demand by raising access charges any further. In fact, they can maximize profits by reducing interLATA rates -- thereby tightening the price squeeze on the IXCs -- resulting in increased demand for their high-margin access services.

Some of the BOCs and other ILECs argue that, to the extent that enforcement of the imputation rules is necessary, the audits required by Section 272(d) and the Commission's cost accounting rules should be sufficient for that purpose. After-the-fact audits occur far too late to provide meaningful protection, however. Thus, ILEC interLATA tariffs must be reviewed when filed for compliance with the imputation rules, precluding nondominant treatment for any ILEC interLATA services.

The separation requirements established in the Competitive Carrier rules should also be imposed on all ILEC in-region interLATA services in order to facilitate enforcement of the imputation rules and to inhibit cross-subsidization and discrimination. As MCI explained in the attached Comments opposing SNET's request for nondominant treatment for its interLATA services, recent audits have revealed that price cap regulation has not diminished the ILECs' appetites for cross-subsidization, and SNET is still abusing and attempting to extend its local bottleneck power.

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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Pursuant to the Common Carrier Bureau's August 9 Order,[1] MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby replies to the initial comments addressing Part VIII(D) of the Notice of Proposed Rulemaking (NPRM) initiating this docket.[2] Part VIII(D) raises the issue of whether non-Bell incumbent local exchange carriers (ILECs) should continue to be regulated under the Commission's Competitive Carrier scheme in their provision of interLATA services originating within their local service regions and whether that scheme should be modified in any way.[3]

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[1] DA 96-1281 (released August 9, 1996).

[2] FCC 96-308 (released July 18, 1996).

[3] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed.

The August 9 Order extended the due date for comments on the ILEC issues raised in Part VIII(D), while maintaining the original comment deadlines for all other issues, including the related issue of whether Bell Operating Company (BOC) affiliates providing in-region interLATA services should be treated as dominant carriers under the Competitive Carrier rules. MCI and other parties filed their initial comments on the other issues raised in the NPRM, including the proper regulatory status of BOC interLATA affiliates, on August 15, 1996, and their Reply Comments on those issues on August 30, 1996. MCI and other parties filed their initial comments on ILEC interLATA service issues on August 29, 1996.[4]

## I. INTRODUCTION

In its initial comments on the ILEC interLATA service issues, MCI explained that non-Bell ILECs, like the BOCs, still

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Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third Report and Order (Third Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[4] Other parties' August 30 Reply Comments on BOC issues will be cited in an abbreviated manner as, e.g., "Bell Atlantic Reply Comments." Other parties' August 29 initial comments on ILEC issues will also be cited in an abbreviated manner as, e.g., "USTA (ILEC) Comments."

possess local bottleneck power that can be, and is being, used to raise interLATA rivals' costs by imposing excessive access charges on them. Since the ILECs' real access costs are only the economic costs of the provision of access services by their local exchange operations, while other interexchange carriers (IXCs) have to pay the much higher tariffed access rates, the ILECs, like the BOCs, enjoy a tremendous cost advantage in providing in-region interLATA services. The resulting price squeeze poses a significant threat to competition. MCI also raised this price squeeze problem in its August 15 comments on BOC in-region service issues.

MCI demonstrated that any serious attempt to inhibit this anticompetitive strategy for ILECs already providing interLATA services must begin with enforcement of the imputation rules, particularly the requirements of Section 272(e)(3) of the Communications Act. In order to permit those rules to have any effect at all, the Commission must require the ILECs to tariff their interLATA telecommunications services, including all bundled offerings with other types of services, volume discounts and other special arrangements, and to file sufficient cost support with those tariffs to make sure that each of their interLATA services covers all of its imputed tariffed access charges and other costs.

MCI also explained that such enforcement of the imputation rules is absolutely necessary (although not sufficient to cure

the problem as long as access charges remain excessive[5]), irrespective of whether the ILECs are otherwise regulated as dominant carriers in their provision of in-region interLATA services. As a practical matter, certain aspects of dominant regulation -- tariff review, with 45-day notice, and full cost support -- are necessary to any enforcement of imputation, thereby precluding complete non-dominant status for the ILECs' interLATA services under any circumstances.

## II. THE BOCS AND OTHER ILECS HAVE NOT ADEQUATELY ADDRESSED THE IMPUTATION ISSUES

The BOCs and other ILECs do not adequately address the access price squeeze problem and the need for imputation, either in their initial comments on ILEC issues or in their August 30 replies on BOC issues. They insist that the local bottleneck has disappeared or at least loosened on account of developing competition and that the interconnection opportunities provided by Sections 251 and 252 of the Act have removed whatever leverage they had in markets dependent on local access.[6] Those

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[5] As long as access charges exceed their economic costs, the Regional Bell Operating Companies (RBOCs) and ILECs will always have a monopoly-based cost advantage in the interLATA services market because their true cost of access is only the economic cost of providing it, while the IXCs' cost of access is the much higher tariffed access charge. The internal imputation of tariffed access charges by RBOCs and ILECs does not change the fact that their actual access costs are much less than their competitors' access costs.

[6] See, e.g., NYNEX Reply Comments at 31; SBC Reply Comments at 27; GTE (ILEC) Comments at 16, 18; Statement of

developments, however, have had no effect on ILEC or BOC access rates, which are still outrageously excessive. At least by the measure of voluntary switched access charge reductions -- i.e., virtually none at all -- the ILECs' and BOCs' local monopolies remain fully in place.[7]

The ILECs also argue that whatever dominance they may possess in local access services cannot be brought to bear on the interLATA market, for a variety of reasons, and that they could never attain a sufficient share of the interLATA market to increase interLATA rates.[8] They assert that any predatory pricing strategy would be doomed to failure, since a BOC or an ILEC could never hope to drive out the large IXCs with below-cost pricing and then recoup its losses through price increases.[9] The harm to competition that could be inflicted from the price

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Daniel F. Spulber (Spulber Statement) at 22-32, attached to USTA (ILEC) Comments.

[7] The Southern New England Telephone Company (SNET) claims that it has reduced switched access rates nine percent in the last three years (see SNET (ILEC) Comments at 12), but, in fact, SNET priced its switched access services either at the price cap or almost at the cap during the last three years, and, for those switched access service baskets that were priced just below cap during that period, its rate reductions were not even as great as the price cap reductions for those baskets during that period. See SNET Annual Access Filing Tariff Review Plans for 1994-96 (CCL rate at the cap in all three years, and traffic sensitive and trunking baskets were 1.3% below cap in 1994 and only 0.8% below cap in 1995 and 1996).

[8] See, e.g., GTE (ILEC) Comments at 11-15, 34-35.

[9] See, e.g., SBC Reply Comments at 27-28; Ameritech Reply Comments at 3.

squeeze imposed by excessive access rates, however, would not require a large market share on the part of an ILEC or BOC. As MCI pointed out in its initial comments, antitrust cases have recognized that raising rivals' costs injures competition, irrespective of the ability or lack thereof to drive those rivals from the market.[10]

Moreover, unlike the typical predatory pricing situation, a BOC or an ILEC does not have to absorb a real loss on its interLATA services in order to subject its competitors to a price squeeze. It can undersell the IXCs, who must pay full tariffed access rates, while still covering its own economic cost of access, which is much less than the tariffed rate. It must be kept in mind that, on a corporate-wide basis, a Regional Bell Operating Company's (RBOC's) or ILEC's access costs are only its local exchange operation's costs of providing access services, not the intra-corporate "payment" of tariffed access charges.[11]

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[10] See Ball Memorial Hospital, Inc. v. Mutual Hospital Insurance, Inc., 784 F.2d 1325, 1339 (7th Cir. 1986). ILEC and BOC arguments as to the impossibility of "leveraging" their local dominance into the interLATA market are thus beside the point. See, e.g., GTE (ILEC) Comments at 20, 34-35; Statement of Paul W. MacAvoy (MacAvoy Statement) at 8-14, attached to GTE (ILEC) Comments; USTA (ILEC) Comments at 5-6; Spulber Statement at 32-44. It would not be necessary to secure market dominance in interLATA services through leveraging in order to inflict significant harm in the interLATA market by imposing excessive access costs on IXCs.

[11] Thus, by insisting that once a BOC affiliate transfers a payment for the tariffed access charge to its local exchange affiliate, it has no cost advantage over independent IXCs, it is Pacific Telesis -- not the IXCs -- that maintains a "fictional pretense" on this point. See Pacific Telesis Reply Comments at

Ameritech is therefore incorrect in arguing that it is irrelevant that a BOC (or, for that matter, an ILEC) might be able to gain market share through an anticompetitive price squeeze.[12] That is precisely the type of monopoly-based illegitimate harm to competition that the Commission must prevent.

The BOCs and ILECs also argue that price cap regulation precludes cross-subsidization and the raising of rivals' costs through increased access charges.[13] They claim that the IXCs have not explained how BOCs will be any more able to raise access rates after they enter the interLATA market than they are now.[14] The ILECs' experts also argue that raising rivals' costs is economically irrational, since that raises interLATA rates, which reduces demand for access services.[15] Those contentions miss the point. As MCI pointed out in its August 15 and 30 comments, as well as its initial comments on ILEC issues, access charges are already vastly in excess of costs.[16] Indeed, Ameritech admits

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31.

[12] See Ameritech Reply Comments at 2-3.

[13] See, e.g., USTA Reply Comments at 23, 26; GTE (ILEC) Comments at 16; Reply Statement of Professor Jerry A. Hausman (Hausman Reply Statement) at 2, attached to USTA Reply Comments.

[14] Hausman Reply Statement at 3.

[15] MacAvoy Statement 12; USTA (ILEC) Comments at 6.

[16] See Hatfield Associates, The Cost of Basic Network Elements: Theory, Modeling and Policy Implications (March 1996), attached to ex parte letter from Frank W. Krogh, MCI, to William F. Caton, Secretary, FCC, Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61 (filed

that access is priced above cost, but pleads that such pricing is necessary to make ends meet.[17] The BOCs and ILECs do not have to do anything more to impose excessive costs on their interLATA rivals.[18] Price cap and cost accounting regulation thus are powerless to halt this abuse. Since access rates do not have to be raised above current levels to implement this strategy, demand for access will not be adversely affected.

The United States Telephone Association (USTA) asserts that MCI's price squeeze scenario, in which "paper losses" in interLATA service are made up by excessive access revenues, would be irrational, or "economic suicide."[19] It argues that in such a situation, an ILEC or BOC is better off sticking to the provision of access service without losing money in interLATA service. That also avoids the real point. By "paper losses," MCI meant, of course, that the BOC affiliate (or ILEC) would not actually be losing anything in interLATA service on a corporate-wide basis, since its actual access costs are much lower than the tariffed

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May 31, 1996).

[17] Ameritech Reply Comments at 3-4.

[18] NYNEX counsels patience; to the extent that MCI and other IXCs are concerned that current access rates are excessive, the Commission has pledged to reform access charges within the next year. See NYNEX Reply Comments at 32 n.95. NYNEX does not, however, offer to delay its own entrance into the in-region interLATA market until after the conclusion of that proceeding. Moreover, there is no guarantee that such reform efforts will finally result in cost-based access charges.

[19] USTA Reply Comments at 26-27.

rate. A BOC or ILEC could continue to impose excessive access charges on the IXCs, while its interLATA operation could undersell the IXCs and still cover its true access costs.

Moreover, USTA ignores the fact that an ILEC can maximize its total profits by reducing the price of its interLATA service, thereby increasing the demand for its switched access services.[20] The most likely consequence of such a strategy would be that total sales by competitive IXCs would fall (because of the ILEC's capture of increased market share) by less than the expansion of the ILEC's access and interLATA revenues combined. As a result, the "opportunity cost" to the ILEC of forgone access net revenue resulting from an increase in its own interLATA traffic would be less than the markup over cost paid by IXCs for access.[21]

Some of the ILECs and BOCs point out that since they will be entering the interLATA market partly on a resale basis, they will have to purchase interLATA service from the IXCs and thus will not be able to exploit fully whatever access cost advantage they

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[20] See Jean Tirole, The Theory of Industrial Organization 69-72, Chapter 3 (1995).

[21] See Franklin M. Fisher, An Analysis of Switched Access Pricing and the Telecommunications Act of 1996 at 8, attached to Reply Comments of MCI Telecommunications Corp., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (filed May 30, 1996). Moreover, to the extent that IXCs are using special access or CLEC services to provide interLATA services, the ILEC's provision of interLATA service using its own switched access service will incur no such "opportunity costs." Id. at 7-8.

might otherwise possess.[22] They have not pledged, however, that they will only provide interLATA service on a resale basis. That some ILECs and BOCs will not be able to implement a price squeeze strategy for all of their interLATA services right away is cold comfort.

Some of the parties argue that, to the extent that enforcement of the imputation rules is necessary, the audits required by Section 272(d) and the Commission's cost accounting rules should be sufficient to make sure that BOC interLATA rates cover all imputed access costs.[23] Presumably, the ILECs would have no objection to similar audits.[24] Although the audit argument implicitly concedes the need to enforce the imputation rules, audits would occur far too late to be effective. If interLATA tariffs are reviewed upon filing for compliance with the imputation rules, they can be rejected for noncompliance. There is no after-the-fact sanction, if an audit later reveals noncomplying rates, that can provide comparable protection, since the rates will have been in effect and the competitive injury accomplished. Accordingly, nondominant treatment for any ILEC in-region interLATA service is out of the question, since 45-day tariff review, with full cost support, is minimally necessary for

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[22] See, e.g., Ameritech Reply Comments at 4; USTA (ILEC) Comments at 6 n.8.

[23] NYNEX Reply Comments at 33; Ameritech Reply Comments at 4-5; Bell Atlantic Reply Comments at 20.

[24] See USTA Reply Comments at 27 n.11.

any attempt to enforce the imputation rules.

Finally, the separation requirements established in the Competitive Carrier rules should be imposed on all ILEC in-region interLATA services in order to facilitate the enforcement of the imputation rules. Although the ILECs point to various distinctions between themselves and the BOCs in terms of market power,[25] those distinctions do not noticeably affect their relative abilities to impose excessive access charges on IXCs. Thus, enforcement of the imputation rules is equally necessary for both ILECs and BOCs. The Competitive Carrier requirements -- separate books of account, no jointly owned facilities and the purchase of all local exchange services by the interLATA affiliate at tariffed rates and conditions -- are clearly appropriate for imputation enforcement. At the same time, they require less separation than Section 272(b) of the Act imposes on the BOCs. Accordingly, the Competitive Carrier separation requirements, together with those aspects of dominant carrier regulation that are necessary to enforce the imputation requirements, are the minimum that should be imposed on all ILEC in-region interLATA services.

Not only do the Competitive Carrier requirements facilitate the enforcement of the imputation rules, but they also provide some protection against other types of discrimination and cross-subsidies. As MCI demonstrated in the attached comments opposing

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[25] See, e.g., GTE (ILEC) Comments at 28-33.

Southern New England Telephone Company's (SNET's) request for non-dominant treatment for its interLATA services, recent audits have revealed that price cap regulation has not diminished the ILECs' incentives and abilities to cross-subsidize, and SNET still displays a propensity to abuse and extend its local bottleneck power.[26] Contrary to the assurances of SNET and the other ILECs,[27] therefore, the Competitive Carrier separate affiliate requirements are also necessary in order to inhibit cross-subsidization and discrimination.

CONCLUSION

MCI does not present its proposed imputation enforcement methodology as a panacea. Even with imputation, the BOCs and ILECs have a tremendous access cost advantage on a corporate-wide basis in interLATA services.[28] As proposed in MCI's comments in this docket, however, imputation enforcement at least diminishes

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[26] See Comments of MCI Telecommunications Corporation, Petition Requesting that Any Interstate Non-Access Service Provided by Southern New England Telecommunications Corporation Be Subject to Non-Dominant Carrier Regulation, CCB Pol 96-03, DA 96-72 (filed Feb. 26, 1996), attached as Exhibit A.

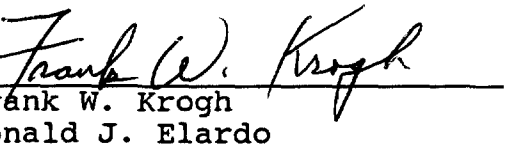
[27] See, e.g., SNET (ILEC) Comments at 12-25; USTA (ILEC) Comments at 2-10.

[28] Parties suggesting that imputation removes any cost advantage (see, e.g., Timothy Tardiff, Economic Analysis of MFS's Numerical Illustration at 1, 4, attached to US West Reply Comments; USTA Reply Comments at 26-27), are therefore incorrect. They ignore the difference between the economic cost of access expended by the ILECs and BOCs on a corporate-wide basis and the tariffed cost of access paid by the IXCs.

this advantage. Accordingly, those aspects of dominant carrier regulation that are necessary to enforce the imputation requirements should be imposed on all ILECs. Moreover, the Competitive Carrier separate affiliate requirements should be imposed on all ILECs in order to reinforce the imputation rules and to protect against discrimination and cross-subsidization.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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Dated: September 13, 1996

EXHIBIT A

Before the
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| In the Matter of: Petition Requesting that Any Interstate Non-Access Service Provided by Southern New England Telecommunications Corporation Be Subject to Non-Dominant Carrier Regulation | CCB Pol 96-03 DA 96-72 |

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby submits its comments on the Petition of Southern New England Telecommunications Corporation for Declaratory Ruling that its interstate interexchange and other non-access services are "nondominant" under the Commission's Competitive Carrier[1/] proceeding and may therefore be provided on an unseparated basis.[2/] As explained below, the relief sought by

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[1/] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Competitive Carrier Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third Report and Order (Third Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[2/] Pleading Cycle Established for Comments on SNET's Petition for Declaratory Ruling That Any Interstate Non-Access Service

Southern New England Telecommunications Corporation (SNET) should not be granted for several reasons, both procedural and substantive. Not only is SNET's request premature, in light of the Commission's ongoing review of the Competitive Carrier criteria, but it would also have to be denied on the merits, whatever standards should be applied.

## SNET's Petition

Currently, SNET provides interstate interexchange services on a resale basis through its affiliate, SNET America, Inc. Because such services are offered through a separate affiliate, they are accorded nondominant regulatory treatment pursuant to the Fourth Report and Fifth Report in the Competitive Carrier proceeding.[3/] If they were offered on an unseparated basis by SNET itself, they would be treated as dominant services.[4/] SNET argues that the original rationale for requiring local exchange carrier (LEC) interexchange services to be provided by a separate affiliate as a condition for nondominant treatment no longer applies to its interexchange services for two reasons: (1)federal and state regulatory developments since the Competitive Carrier proceeding have loosened SNET's local bottleneck power and otherwise diminished its ability to leverage into the

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Provided by SNET be Subject to Non-Dominant Carrier Regulation, Public Notice DA 96-72 (released January 25, 1996).

[3/] See Fourth Report, 95 FCC 2d at 575-79; Fifth Report, 98 FCC 2d at 1195-1200.

[4/] Fifth Report, 98 FCC 2d at 1198-99.

interexchange market whatever market power it may retain in the local exchange and access markets; and (2)SNET's relatively small size and the characteristics of the interexchange market remove any incentive it might have had to exercise any such leverage.

As to the first point, SNET cites such developments as this Commission's cost allocation and other accounting regulations (including ARMIS), price cap regulation,[5/] equal access regulations applicable to the LECs, and its Expanded Interconnection rules.[6/] SNET also points to the Connecticut Department of Public Utility Control (DPUC) requirements of dialing parity for in-state toll calls and two-carrier presubscription, the DPUC price cap regulation of local exchange service, and the DPUC's authorization of local exchange service competition and related requirements that SNET provide competing exchange carriers with exchange resale on a wholesale basis,

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[5/] Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786 (1990), recon., 6 FCC Rcd. 2637 (1991), aff'd sub nom. National Rural Telephone Ass'n. v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

[6/] Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992), recon., 8 FCC Rcd 127 (1992), vacated in part and remanded sub nom. Bell Atlantic Telephone Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994); further recon., 8 FCC Rcd 7341 (1993), Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993), vacated in part and remanded sub nom. Bell Atlantic Telephone Cos. v. FCC, No. 93-1743 (D.C. Cir., filed April 17, 1995); Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994), appeal docketed sub nom. Southwestern Bell Telephone Co. v. FCC, No. 94-1547 (D.C. Cir. Aug. 10, 1994); Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, Third Report and Order, 9 FCC Rcd 2718 (1994).

unbundled local exchange service, interconnection, mutual compensation and number portability.

As to the second point, SNET argues that its small percentage of all access services in the United States and the presence of well-established interexchange competitors deprive it of any incentive to try to leverage its local bottleneck power into the nationwide interexchange market. SNET concludes that because of these developments, its unseparated provision of interexchange service will not pose a threat of cross-subsidization or discrimination against interexchange competitors and that, under the rationale of the Competitive Carrier proceeding, there is therefore no longer any need to require that its interexchange services be provided through a separate affiliate to be accorded nondominant treatment.

## SNET's Market

Although SNET attempts to depict itself as an insignificant factor in the relevant telecommunications markets, and bases its request partially on its alleged insignificance, the reality is quite the opposite. To get an idea of the relative importance of the market in which SNET operates, it is useful to keep in mind that Connecticut ranked eighth out of the 50 states in the number of originating intraLATA toll calls completed and 18th in the

number of interLATA calls in 1994.[7] It ranked 22nd in the number of switched access lines -- over 2 million.[8] Its total revenue of almost $1.5 billion in 1994 placed it in the top 10 single-state BOCs and LECs,[9] and it had over $4 billion total plant in service at the end of 1994.[10] SNET's implicit plea that its size renders de minimis any possible cross-subsidization or discrimination that may result from its unseparated provision of interexchange services thus must be rejected. What happens in SNET's market will have a significant impact on interstate interexchange services. In the event that the Commission decides to address SNET's request on the merits, therefore, it must srutinize SNET's claims extremely carefully.

## I. SNET's REQUEST IS PREMATURE

It would be inappropriate for the Commission to grant relief of the type sought by SNET at this time. Previously, the Commission has considered analogous LEC requests for nondominant treatment only in the context of rulemaking proceedings, and the Commission is now in the midst of a rulemaking that is intended to formulate criteria precisely for these types of requests.

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[7] FCC, Statistics of Communications Common Carriers at Table 2.6, Report No. CC95-73 (released Dec. 14, 1995).

[8] Id. at Table 2.4.

[9] Id. at Table 2.1.

[10] Id. at Table 2.9 (page 86).

In successive orders in the Competitive Carrier proceeding, the Commission reviewed the competitive conditions and market forces faced by different categories of carriers, and, as competitive conditions developed, granted or denied them nondominant status.[11/] The measured approach taken by the Commission in the Competitive Carrier rulemaking reflects the complex economic and regulatory issues that must be resolved before determining that a certain category of service or service provider may be afforded less stringent regulation. Determining such issues only in the context of general rulemakings has ensured that the entire regulatory scheme is internally consistent and that decisions as to particular categories of service or service provider are not made prematurely, without full consideration of the implications of such decisions for other services or categories of service provider.[12/] Accordingly, individual requests for less restrictive regulation were folded into the Competitive Carrier rulemaking, rather than addressed separately.[13/]

It would be especially inappropriate to resolve SNET's Petition now, when the Commission is considering in a pending

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[11/] See, e.g., Fifth Report, 98 FCC 2d at 1191-92, nn.1, 3 (summarizing previous orders).

[12/] See Competitive Carrier Notice, 77 FCC 2d at 333, ¶ 43.

[13/] See, e.g., Fifth Report, 98 FCC 2d at 1193, n.6. See also, RCA American Communications, Inc., 89 FCC 2d 1070, 1078, at ¶ 15 (1982).

rulemaking the criteria that should be applied to all such requests. In the Second Further Notice in the Price Cap Performance Review proceeding, the Commission has requested comments as to whether it should adopt rules defining the conditions LECs must meet to be considered nondominant and whether such conditions should be different from the criteria set forth in Competitive Carrier.[14/] The Second Further Notice specifically references the previous Bell Operating Company (BOC) requests for nondominant status for various categories of interexchange services as examples of the type of request that could be governed by the rules it intends to issue in that proceeding and requests comments as to whether the criteria it adopts should be applied to those pending BOC requests.[15/] Finally, the Second Further Notice requests comments on the procedures that LECs should follow in requesting nondominant status, including how LECs should meet their burden of proof.[16/]

Obviously, until the Commission determines the criteria for LEC nondominance, the procedures that LECs must follow and how they must meet their burden of proof, the Commission cannot act

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[14/] Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, Price Cap Performance Review for Local Exchange Carriers, et al., CC Docket No. 94-1, et al., FCC 95-393 (released Sept. 20, 1995), at ¶ 154.

[15/] Id. at ¶ 153 & n.231, ¶ 155 & n.235, ¶ 156 & n.240.

[16/] Id. at ¶ 157.